

ORIGINAL

Decision No. 26609

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

FRANK WONG DUN and PON TIMOTEY WAI,
co-partners doing business under the
firm name and style of Canton Express
Company,

Complainants,

vs.

FRED JOW, doing business under the
firm name and style of China Draying
Company, FRED JOW,

Defendants.

Case No. 3611.

Oscar T. Barber for complainants.

T. C. McGettigan for defendants.

BY THE COMMISSION:

O P I N I O N

Frank Wong Dun and Pon Timothy Wai, co-partners doing business under the firm name of Canton Express Company, in this proceeding seek an order requiring defendant Fred Jow, doing business under the name of the China Draying Company, to cease and desist alleged common carrier operations for the transportation of property over the public highways for compensation between the City and County of San Francisco on the one hand, and the Cities of Oakland, Alameda, Emeryville and Berkeley on the other. It is claimed defendants have no certificate of public convenience and necessity. Defendant in his answer admits that on or about the first day of June, 1927, he commenced to operate, and still operates, a freight service by auto truck between the points

involved, but denies the existence of a transportation company as defined in the Auto Truck Transportation Act, Chapter 213, Statutes of 1917.

A public hearing was held before Examiner Geary at San Francisco November 10, 1933, at which time the matter was duly submitted and is now ready for decision.

Complainant subpoenaed eleven witnesses and most of these gave testimony under oath. Defendant introduced no witnesses and further than the cross examination of complainant's witnesses, added nothing to the record. There was practically no dispute as to the actual facts, viz. that defendant, under the name of the China Draying Company, commenced operations many years ago as a strictly local hauler of commodities, a drayman, within the City of San Francisco, that at the present time he uses three trucks, only one however being employed in the trans-bay service, that a regular schedule is operated daily except Sunday, leaving Oakland at 9:30 a.m., and San Francisco at 1:30 p.m., and that the trans-bay operations were commenced in the year 1927 or 1928. In 1929 defendant acquired by purchase the facilities of a Chinese named Louie who had four regular trans-bay customers and gave them a service by use of a horse and wagon between the points involved in this proceeding. These four firms were added to defendant's list of patrons, who now has approximately 50 regular customers located in San Francisco and between 40 and 45 in the Alameda County territory and practically all of these are Chinese firms and only Chinese commodities are being handled.

The rates are not published although practically the same charges are assessed to all for transporting like commodities. The record further shows that no effort was or is being made to take tonnage or patronage away from this complainant and that no

rates were ever intentionally cut to secure complainant's customers. There are no contracts in writing. Defendant's trucks perform local draying for the Chinese people within the City limits of San Francisco and also do the pick-up and delivery work for the Chinese using the Pacific Motor Transport Company in San Francisco.

Complainant introduced the testimony of a number of shipper witnesses who stated they were regularly patronizing defendant and had been for several years because of satisfactory service and charges.

Litigants stipulated that the entire records in Application No. 18586, Fred Jow, (China Draying Company) Decision No. 25894 of May 1, 1933 (38 C.R.C. 666); and Case No. 3505, Frank Wong Dun (Canton Express Co.) Decision No. 25960 of May 22, 1933 (38 C.R.C. 735) be considered as part of the record in the instant case. These two proceedings reviewed the facts involved in the case now before us and therefore it is unnecessary to enter into any further discussion of the details covering the operations of either the complainant or the defendant.

Actually the only justification advanced by defendant for its interurban operations, without a certificate of convenience and necessity as required by the Auto Truck Transportation Act, was the suggestion that because the services were only offered to a particular group of people, the Chinese, and only for Chinese merchandise, such restrictions removed the activities beyond the scope of the statute. We do not agree with this interpretation of the law.

It is very clear from this record that defendant is performing a common carrier service between the points involved and that he has never been authorized by this Commission to operate

such a service as required under the provisions of the Auto Truck Transportation Act.

A cease and desist order should issue.

An order of this Commission finding an operation to be unlawful and directing that it be discontinued is in its effect not unlike an injunction issued by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a party is adjudged guilty of contempt, a fine may be imposed in the amount of \$500.00, or he may be imprisoned for five (5) days, or both. C.C.P. Sec 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 8 of the Auto Truck Transportation Act (Statutes 1917, Chapter 213, as amended), a person who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding \$1000.00, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. Likewise a shipper or other person who aids or abets in the violation of an order of the Commission is guilty of a misdemeanor and is punishable in the same manner.

O R D E R

Public hearings having been had in the above entitled case,

IT IS HEREBY FOUND THAT Fred Jow, doing business under the firm name and style of China Draying Company, is operating as

a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Transportation Act (Chapter 213, Statutes 1917, as amended), with common carrier status between the City and County of San Francisco on the one hand, and the Cities of Oakland, Alameda, Emeryville and Berkeley on the other, and without a certificate of public convenience and necessity or prior right authorizing such operations.

Based upon the finding herein and the opinion,

IT IS HEREBY ORDERED that Fred Jow, doing business under the firm name and style of China Draying Company, shall cease and desist directly or indirectly or by any subterfuge or device from continuing such operations.

IT IS HEREBY FURTHER ORDERED that the secretary of this Commission shall cause a certified copy of this decision to be personally served upon Fred Jow, that he cause certified copies thereof to be mailed to the District Attorneys of the City and County of San Francisco, Alameda and Contra Costa Counties, and to the Department of Public Works, Division of Highways, at Sacramento.

The effective date of this order shall be twenty (20) days after the date of service upon defendant.

Dated at San Francisco, California, this 4th day of December, 1933.

U. Leary

W. A. Con

W. B. Leary

W. H. Leary
Commissioners.